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OSHA Recordkeeping

*DOLI/OSHA Recordkeeping and Electronic Reporting Rule;
“What is the Current Situation?”*

Presented by:

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Objectives

- Understand What the New Rule OSHA Issued Covers
- Why The Rule Was Issued
- Advantages of the Rule for Employers
- What Will The New Rule Require
- How Will Electronic Submission Work
- The Compliance Schedule
- Anti-Retaliation Provisions
 - How to Meet Them
 - Drug Testing Post Accident Issues
 - Emerging Issues



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What is OSHA Recordkeeping?

- Many employers with more than 10 employees are required to keep a record of serious work related injuries and illnesses.
- There are some exceptions (Federal Level) for low hazard industries (based on NAICS code).
- MN OSHA did not adopt the exceptions, so all businesses with 10 or more employees must report.
- The rule has been in place for years. The August 2016 rule change (electronic reporting, retaliation provisions, etc.) does not change requirements for keeping injury records (last updated in 2002).



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Why Was the Rule Changed?

- Per OSHA, the rule will prevent worker injuries, illnesses, and deaths.
 - With the information obtained through this final rule, OSHA, employers, employees, employee representatives, other government agencies, and researchers will be better able to identify and remove workplace hazards and thereby prevent worker injuries and illnesses.



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Why Was the Rule Changed?

- Electronic submission of establishment-specific injury and illness data will enable OSHA to use its enforcement and compliance assistance resources more efficiently.
 - Analysis of the data will improve OSHA's ability to **identify, target, and remove safety and health hazards**, thereby preventing workplace injuries, illnesses, and deaths.



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Why Was the Rule Changed?

- Employers can use this information to benchmark their own safety performance. Previously, employers had no way to compare their safety performance with other firms in their industry.
 - Using data collected under the final OSHA rule, employers will be able to compare injury rates at their establishments to those at comparable establishments (similar NAISC codes, size, etc.), and set workplace safety goals benchmarked to other establishments in their industry.



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Polling Question:

Does your organization currently keep OSHA 300 records of injuries, illnesses and development of occupational disease?

- A. Yes
- B. No
- C. Not sure
- D. We don't need to – haven't had a WC loss



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Who Must Keep Records?

- All employers meeting the 10 employee or more rule.
- Same employers who kept records before the rule change.
- The records need to be kept whether there is a death, injury, lost work time or restriction, job transfer, illness or other injury requiring treatment beyond first aid. (OSHA has a long definition on first aid).
- Annual summaries must be posted using OSHA format or equivalent.
- If there are no deaths, injuries, illnesses, etc., still need to post the summary and keep the record (for 5 years).
- This recordkeeping requirement is separate from Bureau of Labor Standards (BLS) requests.



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OSHA Form 300

OSHA's Form 300 (Rev. 01/2004)

Log of Work-Related Injuries and Illnesses

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 20

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0110

You must record information about every work-related death and about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR Part 1904.8 through 1904.12. Feel free to use one line for a single case if you need to. You must complete an Injury and Illness Incident Report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.


Establishment name _____
City _____ State _____

Identify the person		Describe the case			Classify the case				Enter the number of days the injured or ill worker was:		Check the "Injury" column or choose one type of illness:					
(A) Case no.	(B) Employee's name	(C) Job title (e.g., Welder)	(D) Date of injury or onset of illness	(E) Where the event occurred (e.g., Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/situation that directly injured or made person ill (e.g., Second degree burn on right forearm from arc-flash event)	Restricted of Work				Away from work (K)	On job transfer or restriction (L)	(M)	(N)	(O)	(P)	(Q)
						Death (G)	Days away from work (H)	Job transfer or restriction (I)	Other recordable cases (J)			Lost workday (1)	Transferable (2)	Medical (3)	Job transfer (4)	Other (5)
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OSHA Form 300A

OSHA's Form 300A (Rev. 01/2004)

Summary of Work-Related Injuries and Illnesses

Year 20__

U.S. Department of Labor
 Occupational Safety and Health Administration
Form approved OMB no. 1218-0018

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0."

Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's accompanying rule, for further details on this access provision for these items.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
(B)	(H)	(I)	(J)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
(K)	(L)

Injury and Illness Types

Total number of . . .			
(M)			
(1) Injuries	_____	(4) Poisonings	_____
(2) Skin disorders	_____	(5) Hearing loss	_____
(3) Respiratory conditions	_____	(6) All other illnesses	_____

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public reporting burden for this collection of information is estimated to average 56 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any other aspect of this data collection, contact: U.S. Department of Labor, OSHA Office of Statistical Analysis, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20510. Do not send the completed forms to this office.

Establishment Information

Your establishment name _____
 Street _____
 City _____ State _____ ZIP _____
 Industry description (e.g., Manufacturer of new truck trailers) _____
 Standard Industrial Classification (SIC), if known (e.g., 3711) _____
 OR
 North American Industrial Classification (NAICS), if known (e.g., 336212) _____

Employment Information (If you don't have this page, write Worksheet on the back of this page or attach.)

Annual average number of employees _____
 Total hours worked by all employees last year _____

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

 Title _____



NORTH RISK PARTNERS™

Developed & Presented by Integrated Loss Control, Inc.

OSHA 301

OSHA's Form 301 Injury and Illness Incident Report

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.



U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

This *Injury and Illness Incident Report* is one of the first forms you must fill out when a recordable work-related injury or illness has occurred. Together with the *Log of Work-Related Injuries and Illnesses* and the accompanying *Summary*, these forms help the employer and OSHA develop a picture of the extent and severity of work-related incidents.

Within 7 calendar days after you receive information that a recordable work-related injury or illness has occurred, you must fill out this form or an equivalent. Some state workers' compensation, insurance, or other reports may be acceptable substitutes. To be considered an equivalent form, any substitute must contain all the information asked for on this form.

According to Public Law 91-596 and 29 CFR 1904, OSHA's recordkeeping rule, you must keep this form on file for 5 years following the year to which it pertains.

If you need additional copies of this form, you may photocopy and use as many as you need.

Completed by _____
Title _____
Phone (____) _____ - _____ Date ____/____/____

Information about the employee

- 1) Full name _____
- 2) Street _____
City _____ State _____ ZIP _____
- 3) Date of birth ____/____/____
- 4) Date hired ____/____/____
- 5) Male
 Female

Information about the physician or other health care professional

- 6) Name of physician or other health care professional _____

- 7) If treatment was given away from the worksite, where was it given?
Facility _____
Street _____
City _____ State _____ ZIP _____
- 8) Was employee treated in an emergency room?
 Yes
 No
- 9) Was employee hospitalized overnight as an in-patient?
 Yes
 No

Information about the case

- 10) Case number from the Log _____ (Transfer the case number from the Log after you record the case.)
- 11) Date of injury or illness ____/____/____
- 12) Time employee began work _____ AM / PM
- 13) Time of event _____ AM / PM Check if time cannot be determined
- 14) **What was the employee doing just before the incident occurred?** Describe the activity, as well as the tools, equipment, or material the employee was using. Be specific. *Examples:* "climbing a ladder while carrying roofing materials"; "spraying chlorine from hand sprayer"; "daily computer key-entry."
- 15) **What happened?** Tell us how the injury occurred. *Examples:* "When ladder slipped on wet floor, worker fell 20 feet"; "Worker was sprayed with chlorine when gasket broke during replacement"; "Worker developed soreness in wrist over time."
- 16) **What was the injury or illness?** Tell us the part of the body that was affected and how it was affected; be more specific than "hurt," "pain," or "sore." *Examples:* "strained back"; "chemical burn, hand"; "carpal tunnel syndrome."
- 17) **What object or substance directly harmed the employee?** *Examples:* "concrete floor"; "chlorine"; "radial arm saw." *If this question does not apply to the incident, leave it blank.*
- 18) **If the employee died, when did death occur?** Date of death ____/____/____

Public reporting burden for this collection of information is estimated to average 22 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a current valid OMB control number. If you have any comments about this estimate or any other aspects of this data collection, including suggestions for reducing this burden, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.



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ILC OSHA 300A Summary

ILC's OSHA 300 Recordkeeping System 10.0

OSHA 300A - Summary of Work-Related Injuries and Illnesses

For the Year: 2017

ABC Client

xxx street

town, usa xxxxxx

xxx-xxx-xxxx

NAICS Code: ae code lookup

Average Number of Employees:	
Annual Average Number of Employees:	59

Total Hours Worked:	
Total Hours Worked by All Employees:	118000

Number of Cases				Number of Days		Injury and Illness Type					
Total Number of Deaths	Total Number of Cases w/Days Away From Work	Total Number of Cases w/Job Transfer or Restriction	Total Number of Other Record-able Cases	Total Number of Days Away From Work	Total Number of Days on Restriction or Transfer	Total Number of Injuries	Total Number of Skin Disorders	Total Number of Respiratory Conditions	Total Number of Poisonings	Total Number of Hearing Losses	Total Number of All Other Illnesses
0	1	0	1	1	0	2	0	0	0	0	0

Incidence Rates				
	Total Recordable Case Rate (Fatals Incl.)	Total Recordable Case Rate (Fatals not incl.)	Days Away From Work Case (DAWC) Rate	Days Away From Work and Restricted Case (DART)
Actual	3.4	3.4	1.7	1.7
BLS				
Difference				

[Bureau of Labor Statistics \(BLS\)](#)
Gather information on this website to compare to your data. (left)

Employee Access Statement: Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Certification: Knowingly falsifying this document may result in a fine. I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate and complete.

You must post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.

Company Executive Signature Name (Printed) & Title

Phone Date



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Who Needs to Report Them Directly to OSHA?

- Severe injury employers must report any worker fatality within 8 hours and any amputation, loss of an eye, or hospitalization of a worker within 24 hours. Must talk to a person, not leave a message.
- State plans (like MN OSHA) have their own reporting phone number. Unless it's after hours (then report to Federal OSHA).
- Also certain machine injuries (press brakes, point of operation) need to be reported directly to OSHA within 30 days (using their form).



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Who Needs to Report Them to OSHA Annually – Electronic Reporting?

- Establishments with 250 or more employees in industries covered by the regulation (OSHA has published a NAICS listing).
- Establishments with 20-249 employees in certain high risk industries.
- States may add to this listing (e.g. MN OSHA has yet to adopt or state it will change Federal Rule) – for example, they did not exclude certain industries during the last change in May 2015.



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Who Needs to Report Them to OSHA Annually – Electronic Reporting?

Establishments in the following industries with 20 to 249 employees must submit injury and illness summary (Form 300A) data to OSHA electronically

NAICS	Industry
11	Agriculture, forestry, fishing and hunting
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale trade
4413	Automotive parts, accessories, and tire stores
4421	Furniture stores
4422	Home furnishings stores
4441	Building material and supplies dealers
4442	Lawn and garden equipment and supplies stores
4451	Grocery stores
4452	Specialty food stores
4521	Department stores
4529	Other general merchandise stores
4533	Used merchandise stores
4542	Vending machine operators
4543	Direct selling establishments
4811	Scheduled air transportation
4841	General freight trucking
4842	Specialized freight trucking
4851	Urban transit systems
4852	Interurban and rural bus transportation
4853	Taxi and limousine service
4854	School and employee bus transportation
4855	Charter bus industry
4859	Other transit and ground passenger transportation
4871	Scenic and sightseeing transportation, land
4881	Support activities for air transportation
4882	Support activities for rail transportation
4883	Support activities for water transportation
4884	Support activities for road transportation
4889	Other support activities for transportation
4911	Postal service
4921	Couriers and express delivery services
4922	Local messengers and local delivery
4931	Warehousing and storage
5152	Cable and other subscription programming
5311	Lessors of real estate

5321	Automotive equipment rental and leasing
5322	Consumer goods rental
5323	General rental centers
5617	Services to buildings and dwellings
5621	Waste collection
5622	Waste treatment and disposal
5629	Remediation and other waste management services
6219	Other ambulatory health care services
6221	General medical and surgical hospitals
6222	Psychiatric and substance abuse hospitals
6223	Specialty (except psychiatric and substance abuse) hospitals
6231	Nursing care facilities
6232	Residential mental retardation, mental health and substance abuse facilities
6233	Community care facilities for the elderly
6239	Other residential care facilities
6242	Community food and housing, and emergency and other relief services
6243	Vocational rehabilitation services
7111	Performing arts companies
7112	Spectator sports
7121	Museums, historical sites, and similar institutions
7131	Amusement parks and arcades
7132	Gambling industries
7211	Traveler accommodation
7212	RV (recreational vehicle) parks and recreational camps
7213	Rooming and boarding houses
7223	Special food services
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance
8123	Dry-cleaning and laundry services

<https://www.osha.gov/recordkeeping/NAICScodesforelectronicsubmission.pdf>



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Finding Your NAICS Code – Who Needs to Report Them to OSHA Annually?

<https://www.census.gov/eos/www/naics/>



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Who Needs to Report Them to OSHA Annually – Electronic Reporting?

NAICS Search:
Enter keyword or 2-6 digit code
2017 NAICS Search
Enter keyword or 2-6 digit code
2012 NAICS Search
Enter keyword or 2-6 digit code
2007 NAICS Search

Downloads/Reference Files/Tools

- 2017 NAICS
- 2012 NAICS
- 2007 NAICS
- 2002 NAICS
- 1997 NAICS
- Concordances
- NAICS Update Process Fact Sheet [PDF, 37KB]

Contact Us
Email Us. naics@census.gov

Introduction to NAICS

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the [Standard Industrial Classification \(SIC\) system](#). It was developed jointly by the [U.S. Economic Classification Policy Committee \(ECPIC\)](#), [Statistics Canada](#), and Mexico's [Instituto Nacional de Estadística y Geografía](#), to allow for a high level of comparability in business statistics among the North American countries.

This official U.S. Government Web site provides the latest information on plans for NAICS revisions, as well as access to various NAICS reference files and tools. Additional information on the background and development of NAICS is available in the [History](#) section of this Web site.

2017 NAICS Manual

[View or download this publication](#)

[PDF, 7.5MB]

Announcements

[The 2017 NAICS Manual is now available here to view or download](#)

NAICS 2017 Revision is final
[August 08, 2016](#) [PDF, 290KB]
North American Industry Classification System
—Revision for 2017; Notice. Vol. 81, No. 152

[2017 NAICS Structure](#) [XLSX, 94KB]

[2017 NAICS to 2012 NAICS](#) [XLSX, 59KB]

[2012 NAICS to 2017 NAICS](#) [XLSX, 58KB]

[August 04, 2015](#) [PDF, 325KB]
North American Industry Classification System (NAICS) - Updates for NAICS 2017; Notice. Vol. 80, No. 149

[August 08, 2014](#) [PDF, 292KB]
2017 North American Industry Classification System (NAICS) Revision - Notice Regarding Implementation of the Factoryless Goods Producer Classification in NAICS 2017; Notice. Vol. 79, No. 153



Who Needs to Report Them to OSHA Annually – Electronic Reporting?

 UNITED STATES DEPARTMENT OF LABOR  Find it in OSHA [A TO Z INDEX](#)

Occupational Safety and Health Administration

[English](#) | [Spanish](#)

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[Recordkeeping Training Presentations](#) / Non-Mandatory Appendix A to Subpart B -- Partially Exempt Industries

Starting on January 1, 2015, the following NAICS will be partially exempt from OSHA recordkeeping requirements:

Non-Mandatory Appendix A to Subpart B -- Partially Exempt Industries

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following [North American Industry Classification System \(NAICS\)](#), unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, in-patient hospitalization, amputation, or loss of an eye (see [§1904.39](#)).

NAICS Code	Industry Description	NAICS Code	Industry Description
4412	Other Motor Vehicle Dealers	5411	Legal Services
4431	Electronics and Appliance Stores	5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
4461	Health and Personal Care Stores	5413	Architectural, Engineering, and Related Services
https://www.dol.gov	Gasoline Stations	5414	Specialized Design Services



What is Recordable?

Determination of a new case. See §1904.6.

1904.4(b)(1)(iii)

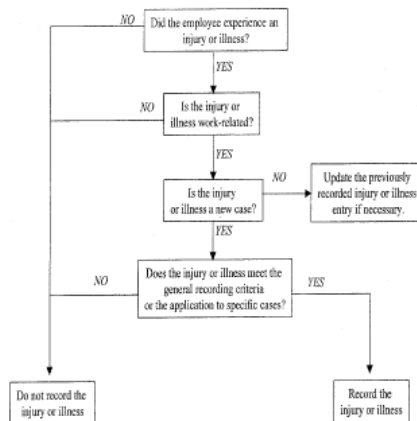
General recording criteria. See §1904.7.

1904.4(b)(1)(iv)

Additional criteria. (Needlestick and sharps injury cases, tuberculosis cases, hearing loss cases, medical removal cases, and musculoskeletal disorder cases). See §§1904.8 through 1904.12.

1904.4(b(2))

How do I decide whether a particular injury or illness is recordable? The decision tree for recording work-related injuries and illnesses below shows the steps involved in making this determination.



[66 FR 6122, Jan. 19, 2001; 81 FR 91809 Dec 19, 2016]



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What About Continuation Cases?

- For example: a case occurs in one year, but results in days away in the next calendar year (fixed date).
- Second example: a case occurs in one year but it's unknown when the employee will return.



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What App is OSHA Using for Compliance? How Long Will It Take?

That is the Big Unknown...

- OSHA was supposed to release information on the app in February 2017 on their website.
- Should only take 15-20 minutes to set up an account and complete the summary (from form 300A).
- It should take 10-12 minutes to enter required information for each injury or illness recorded on your log and injury illness forms (Forms 300 and 301).
- Organizations not allowed to submit on paper.



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How Will Submitting Information Work

- OSHA will provide a secure website.
- Three Options for Submission:
 1. Manually entry into a web-based form
 2. Upload a CSV file to process single or multiple establishments at the same time
 3. Automated systems will have option to submit via an API (Automated Program Interface)
- OSHA is NOT accepting submissions at this time.
- Watch OSHA website (www.osha.gov/recordkeeping) for updates.



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Compliance Schedule

- Establishments with 250 or more employees in industries covered by the recordkeeping regulation, must submit information from their 2016 form 300A by July 1, 2017. These same employers will be required to submit information from all their forms by July 1, 2018.
 - Beginning in 2018, and every year thereafter (at least that is the plan), the information must be submitted by March 2nd.
- State plans have 6 months to adopt requirements that are substantially identical to the requirements in the Federal rule.



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Anti-Retaliation Provisions/Discouraging Reporting

- These are NOT new.
- Can meet the requirements by displaying the OSHA poster.
- Some think this will end all Post-Accident Drug and Alcohol Testing Programs (Non-DOT) – only those that were improperly written or implemented.
- States have statutes already limiting non-DOT Drug and Alcohol Testing.
- Allowing a good system to report incidents and accidents is key.



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Polling Question:

Does your company have a Drug and Alcohol Post-Incident/Accident Testing Program?

- A. Yes – we test everyone, after every accident
- B. No – we don't test
- C. Don't know
- D. Yes – we only test drivers in accidents



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Anti-Retaliation Provisions/Discouraging Reporting – Drug and Alcohol Testing

The state laws generally state that the employer must have a written policy available to every employee that outlines:

- Who is subject to drug testing?
- When drug testing will be performed (pre-employment, random, post accident, etc.).
- What are the consequences of a positive drug screen?



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Anti-Retaliation Provisions/Discouraging Reporting

Recommended Practices for Anti-Retaliation Programs



How to Use These Recommended Practices

This set of recommendations is intended to assist employers in creating workplaces that are free of retaliation, including retaliation against employees who engage in activity protected under the 22 whistleblower laws that the Occupational Safety and Health Administration (OSHA) enforces. This document is advisory in nature and informational in content. It is not mandatory for employers, and does not interpret or create legal obligations.

These recommendations are intended to be broadly applicable to all public and private sector employers that may be covered by any of the whistleblower protection provisions enforced by OSHA. This recommended framework can be used to create and implement a new program, or to enhance an existing program. While the concepts outlined here are adaptable to most workplaces, employers may adjust these guidelines for such variables as employer size, the makeup of the workforce, and the type of work performed.¹

This guidance is directed at employers that may be covered by the 22 whistleblower protection statutes that OSHA enforces, although the basic principles in this guidance could also be useful in circumstances where other anti-retaliation protections apply. **This guidance is not intended to advise employees about their rights or protections under any whistleblower protection statute enforced by OSHA or any other government agency. Information and resources about employees' rights under the whistleblower protection statutes that OSHA enforces can be found at www.whistleblowers.gov.**



Retaliation Is Against the Law

OSHA's Whistleblower Protection Program enforces the whistleblower provisions of 22 federal statutes protecting employees who raise or report concerns about hazards or violations of various workplace safety and health, airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health insurance reform, motor vehicle safety, nuclear, pipeline, public transportation agency, railroad, maritime, and securities laws (see list of statutes at the end of this document).

An employer must not retaliate against an employee for engaging in activities that are protected under these laws. Protected activities may include: filing a report about a



¹ The core recommendations presented in this document were recommended unanimously by the Secretary of Labor's Whistleblower Protection Advisory Committee.

www.whistleblowers.gov/recommended_practices.html



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Anti-Retaliation Provisions/Discouraging Reporting

Retaliation:

- Retaliation is against the law.
- Preventing retaliation is good for employees and good for businesses.
- Employees have rights to report to the government.
- Defining retaliation.



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Anti-Retaliation Provisions/Discouraging Reporting

Create a Anti-Retaliation Program:

- Management needs to be involved and committed to anti-retaliation.
- Culture of being able to raise concerns – create a system where employee concerns are heard.
- Create one or multiple channels for reporting compliance concerns. **Take all reports of retaliation seriously.**
- Train employees and managers in the program.
- Audit the program.

See OSHA Memorandum from October 2016.



Post-Incident Drug Testing – Summary

- DOT requirements are covered under their own standard – DOT 49 CFR Part 40.
- OSHA rule doesn't prohibit drug testing for employees (non-DOT).
- Rule only prohibits employers from using drug testing as a **form of retaliation**.
- Follow established statutes and regulations, such as:
 - Minnesota Statutes 181.950-957
 - Iowa Subdivision Iowa Code 730.5
 - Montana Statutes 39-2-205 to 39-2-211
 - Nebraska Statutes 28-405, 28-419
- **As a general rule, testing is presumed to be lawful unless there is a specific restriction in state or federal law. However, the body of law on employee privacy and related issues continues to evolve, and any testing program that is not explicitly authorized by law should be considered open to legal challenge.**



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Incentive Programs

- This rule does not prohibit incentive programs. However, employers **must not create incentive programs that deter or discourage an employee from reporting an injury or illness.**
- All incentive programs should encourage safe work practices and promote worker participation in safety-related activities.



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Emerging Issues

- House overturns some of OSHA's 2015 Recordkeeping Amendment.
- Senate voted similarly on March 22, 2017.
- Volks Case Review (extent of time violations can be pursued).
 - How far back can OSHA look for records (6 months vs 5 years)?
- How much will it affect electronic recordkeeping?
- Revert back to H&S collaborations from May 2016?



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Emerging Issues

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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. J. RES.

Disapproving the rule submitted by the Department of Labor relating to "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness".

IN THE HOUSE OF REPRESENTATIVES

Mr. BYRNE introduced the following joint resolution, which was referred to the Committee on _____

JOINT RESOLUTION

Disapproving the rule submitted by the Department of Labor relating to "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness".

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*
3 *That Congress disapproves the rule submitted by the De-*
4 *partment of Labor relating to "Clarification of Employer's*
5 *Continuing Obligation to Make and Maintain an Accurate*
6 *Record of Each Recordable Injury and Illness"* (published

G:\HLC\0211702\117.050.xml (05/01/16)
February 21, 2017 (12:27 p.m.)

G:\CMTE\MISC\1\KCH003.XML

2

1 at 81 Fed. Reg. 91792 (December 19, 2016)), and such
2 rule shall have no force or effect.



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Emerging Issues



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 28, 2017
(House)

STATEMENT OF ADMINISTRATION POLICY

H.J. Res. 83 – Disapproving the rule submitted by the Department of Labor relating to "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness"

(Rep. Byrne, R-AL)

The Administration strongly supports House passage of H.J. Res. 83. The resolution would nullify the final rule titled "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness," 81 Fed. Reg. 91792 (Dec. 19, 2016) promulgated by the Department of Labor's Occupational Safety and Health Administration (OSHA). The rule purports to clarify OSHA's recordkeeping requirements by allowing OSHA to cite employers for up to five years for failing to make and maintain injury and illness records. The Administration is committed to reducing regulatory burdens on America's businesses, and this rule imposes costs on employers resulting from continuing recordkeeping obligations.

If this bill were presented to the President in its current form, his advisors would recommend that he sign it into law.



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Summary

- If you had to keep records previously, you still have to unless your number of employees is now less than 10.
- Continue to post summaries in February of each year.
- **Still need to report to OSHA directly: fatality, hospitalization of an employee, amputation, loss of eye.**
- Watch for updates on direct reporting to OSHA.
- Post-Accident Drug and Alcohol Testing is allowed in certain circumstances, but can be considered retaliation if program is not established and implemented properly.



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Summary-References

- Federal OSHA weblink:

<https://www.osha.gov/recordkeeping/finalrule/index.html>

- State Plan Information:

<https://www.osha.gov/dcsp/osp/statestandards.html>

- MN OSHA Record Keeping:

<http://www.dli.mn.gov/OSHA/Recordkeeping.asp>



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Questions?





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Thank You For Attending!